*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT PETITION No.13177 of 1996

% Dated 14-08-2007

K.N.S. Reddy

... Petitioner

VERSUS

$ Commandant, 12 Bn., CRPF,
Zubza, Kohima, Nagaland &
two others.

... Respondents

! Counsel for the Petitioner : Sri Meherchand Nori for
Sri K. Raji Reddy

^Counsel for the Respondents : Sri M. Ganga Rao
Standing Counsel for
Central Government.

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1963 SC 1723
2. AIR 1975 SC 2151
3. AIR 1976 SC 1080
4. AIR 1983 SC 1102
5. (1996) 6 SCC 750
6. (2000) 1 SCC 416
7. AIR 1997 SC 1030
8. (2006) 2 SCC 584
9. (1979) 2 SCC 286
10. (1992) 4 SCC 54
11. (2002) 3 SCC 667

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.13177 of 1996

Date: 14.08.2007

Between:

K.N.S. Reddy

... Petitioner

AND

Commandant, 12 Bn., CRPF,
Zubza, Kohima, Nagaland
& two others.

... Respondents

Counsel for the petitioner : Sri Meherchand Nori for
Sri K.Raji Reddy

Counsel for the respondents: Sri M. Ganga Rao
Standing Counsel for
Central Government

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.13177 of 1996

ORDER:-

The petitioner in this writ petition sought for invalidation of order dated 21.03.1993 passed by respondent No.1 as modified by order dated 02.09.1994 of respondent No.2 and as confirmed by order dated 16.04.1996 passed by respondent No.3.

The facts in brief are stated hereunder:

The petitioner was selected as a CRPF constable on 27.07.1988 in the Hyderabad district. He was later sent to R.T.C.1 Neemach, Madhya Pradesh for 10 months training. After completion of the training, the petitioner was posted in places like Hyderabad and Delhi where he worked for about two years and later he was sent to Punjab on election duty. During that time, the incident, which led to the passing of the impugned orders, has taken place.

On the intervening night of 29/30.5.1992, the petitioner along with other CRPF personnel was performing sentry duty in Jagdev Kalan Platoon Post (for short "the post"). One section of the COI (company) was on foot patrolling duty and it was ambushed by the terrorists in Mallianvangal village of Amritsar

district resulting in one of the personnel by name L/NK M.Bhengra sustaining injuries. After this incident, the post came in "stand to position", to counter any attack on the post. At around 0030 hours, the sentries spotted two persons entering a nearby Gurudwara and another person standing behind a wall opposite the post. The petitioner and another constable, J. Polaiah, opened fire on the person, who was standing behind the wall (according to the petitioner's version, Head Constable Prem Singh apart from ordering firing, himself participated in firing along with the petitioner and J. Polaiah). On the following day, during the combing operations in the village area, the CRPF personnel found one civilian with bullet injuries and he was identified as Hardev Singh, Granthi, who received injuries in the firing taken place on the previous night at the post.

Accusing the petitioner of opening fire on an innocent civilian without any provocation and acting with vengeance, departmental proceedings were initiated against him. The disciplinary authority framed two charges, which read as under:

"**Charge No.1**

> That the said No.881135745 Ct.K.N.S. Reddy of C/12 Bn., CRPF, while functioning as a Sentry duty, at platoon post Jagdevkalan, on 29/30-05092 committed negligence/remissness in the discharge of his duty/misconduct in his capacity as a member of the Force under Section 11(1) of the CRPF Act, 1949, in that he opened fire on innocent civilian without any provocation, and acted with a vengeance resulting injuries to the civilian. While on a active duty without proper permission/orders from his superiors.

Charge No.2

> No.881135745 Ct.K.N.S. Reddy of C/12 Bn, CRPF, was performing sentry duties at Jagdevkalan

> platoon post from 0100 hours to 0500 hours on the intervening night of 29/20.05.1992. In the adjacent Gurudwara, Akhand Path was being solemnized. On 30.05.1992 at about 0030 hours, some personnel from the post went inside the Gurudwara and brought all the persons out and questioned them and even manhandled them. One of the person fearing manhandling by CRPF personnel managed to escape. While, he was running, No.881195745 Ct. K.N.S. Reddy fired 3 rounds upon him, resulting injuries. This injured civilian was later identified as Shri Hardev Singh, S/I Shri Swaran Sigh, Granthi of adjacent Gurudwara, who was injured on both arms due to firing. Thus, No.881135745 Ct. K.N.S. Reddy had opened fire on an innocent civilian without any provocation in an act of vengeance resulting injuries, which amounts to misconduct, neglect and remissness in discharge of his duties, which is prejudicial to good order and discipline of the Force."

One Sri Vivek Chaturvedi, Assistant Commandant, was appointed as Enquiry Officer. After completing the enquiry, he submitted his report. The enquiry officer, while holding that charges against the petitioner are partially proved, however, opined that in view of the personnel involved in the operations in areas such as Punjab, being under tremendous mental stress, the petitioner deserves a lenient view to be taken. Considering the enquiry report, respondent No.1 issued office order vide No.P.VIII-8/92-12-EC-2 dated 21.03.1993 whereunder he dismissed the petitioner from the force. The petitioner filed an appeal before respondent No.2, who while agreeing with respondent No.1 on the culpability of the petitioner, however, felt that the punishment of dismissal from service was too harsh and he accordingly modified the order of dismissal from service into one of removal. Though the petitioner filed a revision before respondent No.3, he was un-successful in persuading him to overturn the orders of respondent Nos.1 and 2. He therefore filed the present writ petition assailing

the aforementioned three orders passed by respondent Nos.1 to 3.

I have heard Sri Meharchand Nori, learned counsel representing Sri K.Raji Reddy for the petitioner and Sri M. Ganga Rao, the learned Additional Standing Counsel for Central Government.

Learned counsel for the petitioner submitted that the finding of the enquiry officer, the disciplinary, the appellate and the revisional authorities are not based on evidence and that the material on record does not support the conclusions drawn by these authorities and that therefore the orders of respondent Nos.1 to 3 are liable to be set aside and the petitioner is entitled to re-instatement with consequential benefits.

Sri M. Ganga Rao, learned Standing Counsel for the respondents opposed the contentions of the learned counsel for the petitioner and submitted that the enquiry officer and respondent Nos.1 to 3, who passed orders against the petitioner, have applied their mind to the material on record and that sitting in judicial review this Court will not re-appreciate the evidence. The learned counsel further submitted that even if a different view is possible on the basis of the analysis of the evidence, the Court will not substitute its view with the view taken by the hierarchical authorities of the department and that therefore the petitioner is not entitled to any relief.

Before considering the respective submissions of the learned counsel, it is necessary to keep in view the settled legal principles governing judicial review on disciplinary proceedings. The Apex Court in a plethora of decisions held that while

examining the orders passed by the departmental authorities in matters concerning disciplinary proceedings, the Courts/Tribunals do not act as appellate bodies; that unlike in criminal cases proof beyond reasonable doubt is not required in departmental proceedings and that preponderance of probabilities is enough to hold an employee guilty of misconduct; that the Courts/Tribunals would not re-appreciate the evidence and interfere with the orders of the departmental authorities merely because another view is possible and that strict rules of evidence are not applicable to disciplinary proceedings and where there is some legally admissible evidence available to support the finding of guilt, the Courts/Tribunal would not set aside the penalty imposed on the ground that the evidence available on record is not sufficient to sustain the order of penalty. See **STATE OF ANDHRA PRADESH VS. S. SREE RAMA RAO**[1], **STATE OF ANDHRA PRADESH VS. CHITRA VENKATA RAO**[2], **K. L. SHINDE VS. STATE OF MYSORE**[3], **JIWAN MAL KOCHAR VS. UNION OF INDIA**[4], **B.C.CHATURVEDI VS. UNION OF INDIA**[5], **HIGH COURT OF JUDICATURE AT BOMBAY THROUGH ITS REGISTRAR VS. SHASHIKANT S PATIL**[6], **INDIAN OIL CORPORATION LIMITED VS. ASHOK KUMAR ARORA**[7], **SOUTH BENGAL STATE TRANSPORT CORPN VS. SWAPAN KUMAR MITRA**[8].

Bearing the aforementioned principles in mind, I shall now consider the submissions made by the learned counsel. From a reading of the two charges, which are reproduced above, it is evident that the sum and substance of the charges is that the petitioner opened fire at an innocent person and injured him

without any provocation. The further imputation against the petitioner was that he acted with vengeance/ negligence/remissness in opening fire and it resulted in causing injuries to a civilian and that this was done without proper permission/orders from the superiors.

The case of the petitioner as could be culled out from the order dated 21.03.1993 passed by respondent No.1 is that one section of COI, which was on foot patrolling duty, was ambushed by the terrorists in Mallianvangal village of Amritsar district resulting in injuries to L/NK M. Bhengra. After the incident, the out post came in "stand-to position" to counter any attack on the post. At about 0030 hours three persons were moving from the village towards Gurudwara, which was in the vicinity of the post. Out of these, two persons went inside the Gurudwara and the third person took position behind a wall just on the opposite side of the post and fired three to four rounds upon the post. As ordered by the post commander Head Constable Prem Singh, delinquent also returned the fire but the culprit escaped under the cover of darkness. Head Constable Prem Singh along with some other personnel went inside the Gurudwara and brought the two civilians out for enquiry. In the morning a joint combing operation was launched by the party along with Punjab police in the village area wherein one civilian, who had received bullet injuries due to fire in the previous night, was arrested from a house and later taken to hospital by the Punjab police for treatment.

In order to prove the allegations against the petitioner, the department examined constable J. Polaiah and Head Constables Ram Rattan and K. Burman.

Respondent No.1 in his order referred to the evidence of J.

Polaiah examined as PW.1, as under;

> "No.881136118 Ct. J. Polaiah (PW.1) has stated that on 30.05.1992 one section of the COY which was on foot patrolling duty was ambushed by the terrorists in village Mallianvangal of Amritsar District resulting bullet injuries to L/NK M. Bhengra. After the incident, the out post came in stand-to position to counter any attack on the post. At about 0030 hours, 3 persons were moving in the village towards Gurudwara adjacent to campus. While 2 persons entered Gurudwara, 1 person took position behind the wall, just on the opposite side of the post and fired 3-4 rounds on the post which sounded like pistol shots. He along with delinquent Ct. K.N.S. Reddy returned the fire, but the civilian escaped under the cover of darkness. A joint combing operation was launched in the morning by our party along with Punjab Police to nab the culprits. The civilian who had fired on the post in the previous night was nabbed from a house. He sustained bullet injuries on his both arms."

The evidence of Head Constable, K. Burman, which is discussed by respondent No.1 in para 5 is also relevant to be extracted hereunder.

> "On 29/30.05.1992 night, one section of the COY which was on foot patrolling duty was ambushed by the terrorists in village Mallaianvangal of Amritsar District resulting in bullet injury to L/NK M. Bhengra. After the incident, the out post came in stand-to position to counter any attack on the post. At about 0030 hours, HC K. Burman who was at signal centre rushed out on hearing firing sound. When he came out, the firing was stopped. HC Prem Singh informed him that 3 persons were moving towards Gurudwara at a distance of about 50 yards from the post, out of those, 2 persons went inside the Gurudwara and the third person opened fire upon the post from the wall side."

Similarly, the evidence of Head Constable, Ram Rattan was also briefly referred to by respondent No.1 in para 6 of his order

and it is relevant to extract the same below.

> "On 29/30.05.1992, one section of the COY which was on foot patrolling duty was ambushed by the terrorists in village Mallianvangal of Amritsar District resulting in bullet injuries to L/NK M. Bhengra. After the incident, Jagdevkalan out post came in stand-to position to counter any attack on the post. At about 0030 hours, Ct.J. Polaiah and Ct. K.N.S. Reddy along with Ct. D.V.Rao went up to Gurudwara which is adjacent to the post and asked the inmates to come out. While 2 persons came out of the Gurudwara, one person perhaps due to fear ran away. Ct. J. Polaiah and Ct. K.N.S. Reddy resorted to firing on the running civilian. However, on his arrival along with HC Prem Sing, they stopped the firing. When asked about the firing, Ct. K.N.S. Reddy and Ct. J.Polaiah stated that 3 persons were moving from village, out of which 2 persons went inside the Gurudwara and third person opened fire on the post and they had retaliated. The two persons in Gurudwara were later brought to the camp for enquiry. In the morning, a joint combing operation was carried out in which the civilian who sustained injuries due to firing in the night by Ct. K.N.S. Reddy and Ct. J. Polaiah, was found in a house. However, there was no evidence/indication to establish that there was any firing on the post in the previous night."

The enquiry officer in his report did not specifically refer to, much less, analyzed the evidence of the constables J. Polaiah, K. Burman and Ram Rattan. He held that the story of firing by the civilian at the post is made out by the petitioner to hide his inability to exercise his control over firing on civilian. It is significant to extract the relevant portion of this finding of the enquiry officer.

> "Since HC Prem Singh has already proceeded on voluntary retirement in August 92 his statement could not be recorded. On going through the statements of prosecution witnesses and out of delinquent, it appears that story of firing by the civilian at the post is made out

by delinquent to hide his inability to exercise control over his firing on civilian. Neither empty cases were found at the spot nor any weapon could be recovered from the possession of the injured civilian. **It appears that after ambush on the section of C/12 when they saw civilians moving towards the post delinquent mistook them as terrorists and opened fire in panic causing bullet injuries to the civilian**."

On the plea of the petitioner that he opened fire on the dictate of the superior officer, namely; Head Constable Prem Singh, the enquiry officer held as under:

> "On the other hand, the delinquent states that he fired on the dictate of Post Commander H.C. Prem Singh who proceeded on V/Retirement in 8.92 so it is not possible to record his statement."

In conclusion, the enquiry officer held:

> "Therefore charges framed against No.881135745 Ct.K.N.S.Reddy are partially proved but it is also recommended that a lenient view may be taken towards him considering his young age and the fact that our men serve under tremendous mental stress in OPS areas such as Punjab and there are unforced errors committed by our force personnel which should also be considered in his case."

The plea of the petitioner to the extent that he opened fire along with another constable J. Polaiah in return of firing by the civilian from behind the wall is lent corroboration by two of the three departmental witnesses, namely; J. Polaiah and K. Burman. From the extracted portions of their evidence, it is seen that J. Polaiah's version fully supports the version of the petitioner that while two persons entered Gurudwara, one person took position behind the wall on the opposite side of the post and fired 3 to 4

rounds on the post which sounded like pistol shots and whereupon when he and the petitioner returned fire, the civilian escaped under the cover of darkness.

PW.2, Head Constable, K. Burman, stated that he was at the signal centre and on hearing the firing sound, he came out and the firing was stopped. He stated that he was informed by Head Constable, Prem Singh that two persons moved towards Gurudwara and another person opened fire upon the post from the wall side and in his cross-examination he stated that the petitioner and constable J. Polaiah had reportedly fired on the civilian. However, Head Constable, Ram Rattan has a different version, according to which, while the petitioner and constable J. Polaiah resorted to fire, he along with Head Constable, Prem Singh arrived at the post and thereupon the firing was stopped. He also deposed that there was no evidence/indication to establish that there was any firing on the post in the previous night.

From the aforementioned evidence, the following can be taken as admitted facts;

a) prior to the firing incident at the post, a CRPF patrolling team was ambushed in a nearby place resulting in injury to L/NK M. Bhengra;

b) the personnel including the petitioner at the post have taken “stand-to position” to counter any attack on the post;

c) three persons were found near Gurudwara and admittedly two of them entered it, while one person was standing outside Gurudwara.

While these are the admitted facts, the following are the

disputed facts.

a) The civilian standing behind the wall taking up position and firing pistol shots at the post, and

b) Head Constable, Prem Singh ordering opening of fire and himself participating in firing.

As discussed hereinabove, two of the three departmental witnesses spoke to the fact that the civilian has taken up position behind the wall and fired at the post and the petitioner and PW.1, J.Polaiah, opened fire, Head Constable Ram Rattan, however, had a varied version to the extent of the civilian opening fire. From the fact that no empty cartridges were recovered at the post, the enquiry officer and respondent No.1 concluded that the theory of firing by the civilian at the post cannot be believed. To the extent of this finding, this Court while undertaking judicial review cannot interfere as this can certainly be said to be based on theory of probability. But assuming that the petitioner and the other Head Constable opened fire without there being any fire by the person from the other side, the question is whether on the admitted circumstances the petitioner is guilty of negligence/remissness in opening fire and whether it was an act of vengeance.

As regards the imputation of vengeance, there is absolutely no evidence whatsoever that the petitioner as a measure of vengeance opened fire at the civilian. Neither the enquiry officer nor any of the three respondents have given any finding that opening of fire by the petitioner was an act of vengeance. Therefore, this part of the imputation against the petitioner stands disproved.

There then remains the question whether the petitioner

committed act of negligence/remissness in the discharge of his duty and his opening fire constitutes misconduct.

Central Reserve Police Force Act 1949 (for short 'the Act') prescribes various punishments and penalties on the personnel of the service. Section 9 of the Act deals with "more heinous offences" and prescribes punishments and Section 10 deals with "less heinous offences" and prescribes punishments therefor. Section 11 deals with the penalties to be imposed following the initiation of departmental proceedings under the head "minor punishments". It is useful in this context to extract Section 11(1) of the Act to the extent it is relevant:

> "11 (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say:-
> (a) reduction in rank:
> (b) Fine of any amount not exceeding one month's pay and allowances:
> (c) confinement to quarters, lines or camp for a term not exceeding one month:
> (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra ground, fatigue or other duty; and
> (e) removal from any office of distinction or special emolument in the Force."

It could be seen from the above reproduced provision that the penalties indicated in the said provision could be imposed on any member of the force by the competent authority if he considers that such member is guilty of disobedience, neglect of duty or remissness in discharge of any duty or of other misconduct in his capacity as member of the force. As already

noted hereinbefore, the petitioner is imputed with negligence/remissness in discharge of his duty/misconduct. Neither the Act nor the CRPF Rules 1955 framed by the Government of India, Ministry of Home Affairs defined the words neglect of duty (negligence), remissness and misconduct. In the absence of the statutory provisions defining these words, it is necessary to rely upon the dictionaries and judicial precedents if any dealing with these expressions.

Stroud's judicial dictionary, fifth edition, described negligence as under:

> "NEGLIGENCE (1) " 'Negligence' is not an affirmative word; it is a negative word; it is the absence of such care, skill, and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed' (per Villes J., *Grill v. General Iron Screw Collier Co.,* 35 L.J.C.P. 330). Cp. Skill; Ordinary Care.
>
> (2) "Negligence is the omitting to do something that a reasonable man would do, or the doing something which a reasonable man would not do" (per Alderson B., *Blyth v. Birmingham Water Works Co.,* 11 Ex.784). Accordingly it was there held that a water works company was not liable for injuries occasioned by one of its plugs bursting through an extraordinary frost."

Black's Law Dictionary defined 'negligence' as:

> "**Negligence**; The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights. The term denotes culpable carelessness."

The word 'remissness/remiss' is virtually a synonymous

expression for the word 'negligence'. Oxford English Reference Dictionary, second edition, described 'remiss' as "careless of duty; lax, negligent".

The Supreme Court had occasions to deal with as to what constitutes misconduct. In **Union of India Vs. J.Ahmed**[9] referred to earlier precedents, some of which are English decisions and it is relevant to extract the relevant portion of the judgment:

> " If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in his service, it is misconduct (see **Pierce v. Foster – 17 QB 536**). A disregard of an essential condition of the contract of service may constitute misconduct. [see **Laws v. London Chronicle (Indicator Newspapers) 1959 (1) WLR 698**]. This view was adopted in **Shardaprasad Onkarprasad Tiwari** v. **Divisional Superintendent**, **Central Railway**, **Nagpur Divison**, **Nagpur**, **(61 Bom LR 1596: (AIR 1961 Bom 150)** and **Satubha K. Vaghela v. Moosa Raza, (1969) 10 Guj LR 23**. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:
>
> "misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

It is further held:

> "There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside

the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabin-man signalling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of life."

In **State of Punjab and Others Vs. Ram Singh Ex-Constable**[10] the Supreme Court described 'misconduct' as under:

"Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

In **Baldev Singh Gandhi Vs. State of Punjab and Others**[11] the Supreme Court described misconduct on similar lines as was described in the judgments earlier referred to.

Applying aforementioned legal principles, I shall now consider whether the acts attributed to the petitioner constitute misconduct, negligence/remissness. As held in **J.Ahmed (9**

supra) which quoted Stroud's judicial dictionary with approval and **State of Punjab (10 supra)**, to constitute misconduct, the act must have been done with ill-motive and acts of negligence, errors of judgment or innocent mistakes do not constitute misconduct. To put it differently, misconduct and negligence do not co-exist. The very fact that the accusation against the petitioner is that he acted with negligence/remissness, there is no place for misconduct in performing such an act. Therefore, the charge of misconduct cannot be sustained.

In the absence of misconduct the further question to be considered is whether, considering the circumstances in which the petitioner opened fire along with an other constable J.Polaiah, the said act constitutes negligence/remissness.

The event of firing by the petitioner was preceded by a serious incident of ambush of a patrolling party by the terrorists in a neighbouring place. Consequently, the personnel at the post came in "stand-to position" to counter any attack on the post. It was the dead of the night in which three persons were found moving, out of whom two entered Gurudwara and the third person stood outside. At that stage, assuming that the third person has not opened fire, there was every possibility for the sentries on duty apprehending attack at the post. Evidently, in their anxiety to preempt such an eventuality, the two constables including the petitioner would have opened fire. No doubt, the petitioner has taken the stand that the civilian, who was standing outside Gurudwara, opened fire at the post and indeed this plea was supported by no less then two out of the three witnesses examined by the department. Even if we do not accept this plea set up by the petitioner (though there is no justification for the enquiry officer

and the disciplinary authority to term it as a totally fabricated theory), any person, who is alert as a sentry placed in that situation perhaps would have reacted in the same way as the petitioner and the other constable had done, namely; by opening fire at the person, who is suspected to be a terrorist. There is nothing unnatural to suspect a civilian standing at an odd hour in an area which was totally infested with terrorism/militancy and mistake him as a terrorist. This was more so when an incident involving ambush by terrorists in the vicinity resulting in injury to a CRPF personnel has preceded some moments earlier. While analyzing these circumstances, the enquiry officer albeit holding the petitioner guilty of negligence placed on record the tremendous mental stress, men in uniform performing duty in operational areas in Punjab were undergoing. The enquiry officer further termed the incidents such as this as “unforced errors”

Unfortunately, none of the respondents had considered the pressure situation in which the petitioner was placed in opening fire at a person, who was genuinely suspected as a terrorist. (Once the allegation of vengeance being not supported by any evidence or finding falls to ground, as a natural corollary, the act of the petitioner in opening fire should be treated as a genuine act). In my considered opinion, the previous incident of ambush by the terrorist party and the sight of the civilian in the dead of the night constitute sufficient reason for a sentry on alert to open fire to pre-empt another ambush/attack by terrorists. It could quite well be that in an ordinary situation where civilians were moving about during nights, an armed person on duty, in the absence of a provocative action from the civilian end is not justified in opening fire. But the situation in which the petitioner opened fire is incomparable with the ordinary situations. There is no failure on

the part of the petitioner to exercise the standard of care which a reasonably prudent man in a similar situation would have exercised. Indeed the act complained against the petitioner is converse to the classic example of a sleeping sentry at his post, given by the Supreme Court in **J.Ahmed (9 supra)**. Ironically, the petitioner is punished for his alertness, terming it as negligence/remissness/misconduct. Unfortunately the respondents being superior authorities and having in-depth knowledge of the circumstances prevailing in the area at the relevant time, failed to appreciate from proper perspective the act of opening of fire by the petitioner. On a holistic consideration of the admitted facts of the case it cannot be said that the conduct of the petitioner in opening fire constitutes an act of negligence/remissness.

One of the facets of the charges against the petitioner is that he opened fire "without proper permission/orders from his superiors". Admittedly, the Head Constable, Prem Singh is the superior officer of the petitioner and competent to ordain his subordinates such as the petitioner to open fire. In Annexure-IV of the charge sheet, he was cited as the proposed witness at Sl.No.1. Interestingly, he was not even summoned for examination. When the petitioner specifically urged this ground, the enquiry officer in his enquiry report stated that since he proceeded on voluntary retirement in August, 1992, it is not possible to record his statement. It is not the case of the department that summons were sent to Head Constable, Prem Singh and that he declined to come and depose. While dealing with the contention of the petitioner that he resorted to firing on the orders of Head Constable, Prem Singh, respondent No.1 termed

the said stand as absolutely false, fabricated and beyond truth and afterthought with the observation "Head Constable, Prem Singh has categorically denied of having issued any such orders". I do not find any basis in this statement of respondent No.1. In the previous sentence of the order, the 1st respondent stated that since the said Prem Singh took voluntarily retirement with effect from 01.09.1992, he could not be questioned "at this belated stage". While there is no warrant to hold that a few months after his retirement is a belated stage to summon him, at any rate, the statement "Prem Singh categorically denied having issued any such orders" contradicts the earlier conclusion that Prem Singh could not be questioned. If the department has recorded the statement of Prem Singh outside the departmental proceedings, such a statement cannot be relied upon without giving the petitioner an opportunity to meet such a statement.

Respondent No.2 in his order passed, while disposing of the appeal, stated as under:

> "HC Prem Singh has already proceeded on voluntary retirement w.e.f. 01.09.1992. As has been already denied having passed any orders for firing on 29/30.05.1992 during the course of COI, his summoning for the D.E. to record his statement was not felt necessary by the E.O. Hence, the plea of the appellant of not summoning HC Prem Singh for recording his evidence on the same issue again and again is not warranted."

The above extracted order of respondent No.2 is at variance with the finding of the enquiry officer. The enquiry officer did not hold that as Prem Singh has already denied having issued any orders; he felt it not necessary to summon him. On the other hand, as already mentioned above, the enquiry officer did not summon Prem Singh only on the ground that since he took

voluntary retirement, it was not possible to record his statement.

In my considered opinion, summoning of Prem Singh as a witness, as initially proposed by the department, would have clinched the entire issue. In the absence of any effort made by the department to summon HC Prem Singh, who would have been a very material and crucial witness, I am unable to agree with the reasoning of the enquiry officer and respondent Nos.1 and 2 that there was no possibility of examining him in view of his voluntary retirement. Moreover, it is reasonable to presume that the department deliberately avoided summoning and examining Prem Singh to ascertain the truth or otherwise of the claim of the petitioner that he opened fire on the instructions of HC Prem Singh. Further, relying on the so called statement of Prem Singh, which was not marked as exhibit in the disciplinary proceedings and without supplying a copy of the alleged statement of Prem Singh to the petitioner vitiates the finding against the petitioner that he opened fire without the direction/permission of HC Prem Singh.

In fact, under Charge No.1, the petitioner is not imputed with opening fire without permission, but it is alleged that he opened fire “without proper permission/orders from his superiors”. The very charge itself is suggestive of permission/order of the superior officer being in existence, but the same is not proper. The charge itself in my considered view is vague and devoid of specific accusation. Even on this ground, this part of the charge cannot be sustained.

In any event, even if the petitioner did not have the proper permission/orders from the superior officers, for the reasons already referred hereinbefore, his opening fire did not constitute an

act of negligence/remissness/misconduct warranting imposition of punishment on him.

For the aforementioned reasons, I hold that the respondents failed to prove both the charges against the petitioner on the basis of any legally acceptable evidence and material. Therefore the writ petition is allowed as prayed for and the petitioner is entitled to reinstatement into service with all consequential benefits.

_____

C.V.NAGARJUNA REDDY, J

Date: 14.08.2007
ES

---

[1] AIR 1963 SC 1723
[2] AIR 1975 SC 2151
[3] AIR 1976 SC 1080
[4] AIR 1983 SC 1102
[5] (1996) 6 SCC 750
[6] (2000) 1 SCC 416
[7] AIR 1997 SC 1030
[8] (2006) 2 SCC 584
[9] (1979) 2 SCC 286
[10] (1992) 4 SCC 54
[11] (2002) 3 SCC 667